

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 7  
 )  
KYUNG HOON LEE )  
YURISOO LEE ) CASE NO. 04-64967-MHM  
 )  
Debtors )

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DAVID LIM d/b/a SUN CLEANERS )  
and KAY CLEANERS )  
 )  
Plaintiff ) **ADVERSARY PROCEEDING**  
 ) **NO. 04-9120**  
 )  
v. )  
 )  
KYUNG HOON LEE )  
 )  
Defendant )

**ORDER**

The complaint in this adversary proceeding was filed June 30, 2004. The bar date for filing complaints to determine dischargeability was July 2, 2004. When the complaint was filed, Plaintiff neglected to serve Debtor's attorney with the complaint, as required by Bankruptcy Rule 7004(b)(9). By order entered December 30, 2004, that omission was pointed out to Plaintiff and Plaintiff was allowed 20 days within which to obtain issuance of new summons and to serve Debtor's attorney. New summons was issued January 12, 2005, and the complaint and new summons was served on Debtor's attorney January 12, 2005.

Defendant filed a motion to dismiss on the grounds that the complaint was not properly served and on the grounds that the complaint was not timely filed. Plaintiff opposes dismissal.

Defendant's assertion that Plaintiff failed to serve Defendant's attorney is incorrect. Defendant's attorney was served with reissued summons and the complaint within the time limit allowed in the order entered December 30, 2004.<sup>1</sup> Nevertheless, Defendant appears to assert that Plaintiff was required to serve Defendant and Defendant's attorney *at the same time*, so that Plaintiff should have re-served Defendant when he served Defendant's attorney. Defendant presents no statutory or case law in support of that proposition. The reissued summons, which was served upon Defendant's attorney, provided an extended deadline for the filing of a responsive pleading, based upon the date of the reissued summons. Both Defendant and Defendant's attorney were served with the same complaint and Defendant was able to file the motion to dismiss within the time limit set forth in the reissued summons. Defendant has suffered no prejudice as a result of Defendant and Defendant's attorney having been served at two different times.

The complaint was filed June 30, 2004. Pursuant to Bankruptcy Rule 4007, a complaint to determine dischargeability must be *filed* within 60 days after the date first set for the §341(a) meeting of creditors. The bar date in Debtor's case was July 2, 2004. Plaintiff's complaint was filed prior to that date. The action of filing and serving are separate and distinct. "Filing" occurs when a document is received by the Clerk, not when it is served. *Coggin v. Coggin*, 30 F. 3d 1443 (11th Cir. 1994). Therefore, Defendant's motion to dismiss is without merit. Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss is denied.

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<sup>1</sup> Extension of 120-day time period to perfect service of process on defendant was warranted because dismissal would foreclose Plaintiff's claim entirely and Defendant had actual notice of the lawsuit. *See Horenkamp v. Van Winkle and Co.*, 2005 WL 564144 (11<sup>th</sup> Cir. 2005).

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.**

IT IS SO ORDERED, this the \_\_\_\_ day of September, 2005.

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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE